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Return Date & Time:
MAY 15, 2017 9:30 AM

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X Chapter 13 Case No: 116-42675-ESS
IN RE:

NOTICE OF MOTION

TRISHA K. CATA CUTAN,
Debtor

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PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Elizabeth S. Stong, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3585 on MAY 15, 2017 at 9:30 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. Section 1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) business days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York
April 27, 2017

/s/ Marianne DeRosa
MARIANNE DeROSA, TRUSTEE
125 JERICHO TPKE, SUITE 105
JERICHO, NEW YORK 11753
(516) 622-1340

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13 116-42675-ESS

TRISHA K. CATA CUTAN,

APPLICATION

Debtor.

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TO THE HONORABLE ELIZABETH S. STONG, U.S. BANKRUPTCY JUDGE:

Marianne DeRosa, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 7 on June 17, 2016. On October 14, 2016 the case was converted to one under Chapter 13, and, thereafter, Marianne DeRosa was duly appointed and qualified as Trustee.

2. The Debtor's proposed Chapter 13 Plan, (hereinafter "The Plan"), dated and filed with the Court on January 31, 2017, and reflected in the Court's docket as number 26 provides for a monthly Plan payment of \$250.00 per month for a period of 33 months, followed by a monthly Plan payment of \$575.00 per month for a period of 10 months. Additionally, The Plan provides for full repayment to all filed secured and priority proofs of claim, as well as a pro rata distribution to general unsecured proofs of claim.

3. The Trustee objects to the confirmation of the Plan because the Debtor's proposed Plan payment is insufficient to pay general unsecured claims in full and the Debtor's supporting budget, Schedules I and J, does not indicate an ability to increase the plan payments, therefore the Debtor cannot comply with The Plan as required by 11 U.S.C. §1325(a)(6).

4. Furthermore, the Debtor has failed to:

- a. provide the Trustee with a copy of an affidavit by the Debtor stating the Debtor has paid all amounts that are required to be paid under a domestic support obligation or that the Debtor has no domestic support obligations as required by E.D.N.Y. LBR 2003-1(b)(ii)(A) and (B);
- b. provide the Trustee with a copy of affidavit from the Debtor stating whether the Debtor has filed all applicable federal, state and local tax returns under the Bankruptcy Code Section 1308 as required by E.D.N.Y. LBR 2003-1(b)(iii);
- c. file the original affidavits with the Court as required under subdivisions (b)(ii) and (iii) as required by E.D.N.Y. LBR 2003-1(c).
- d. file an Official Form B22C (CMI), Statement of Monthly Income and Disposable Income pursuant to 11 U.S.C. § 521(a)(1)(B)(v)

- e. comply with 11 U.S.C. §1325(a)(6) in that the Debtor has not submitted timely Chapter 13 plan payments to the Trustee, and is \$250.00 in arrears through and including April 2017.

5. The Plan cannot be confirmed and as a result a delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. § 1307(c)(1) and (c)(5).

6. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order denying confirmation and dismissing this Chapter 13 case and such other and further relief as may seem just and proper.

Dated: Jericho, New York
April 27, 2017

/s/ Marianne DeRosa
Marianne DeRosa, Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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Chapter 13 Case No: 116-42675-ESS

IN RE:

TRISHA K. CATA CUTAN,

CERTIFICATE OF SERVICE
BY MAIL

Debtor.

-----X

This is to certify that I, DANI M. BOYER, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

TRISHA K. CATA CUTAN
21-06 23rd AVENUE, APT 1A
ASTORIA, NY 11105

IRENE MARIE COSTELLO, ESQ.
65 BROADWAY, #508
NEW YORK, NY 10006

WILLIAM K. HARRINGTON, US TRUSTEE
ATTN: RACHEL WEINBERGER, ESQ.
201 VARICK STREET
NEW YORK, NY 10014

This April 27, 2017

/s/DANI M. BOYER
DANI M. BOYER, Paralegal
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
125 Jericho Tpke, Suite 105
Jericho, New York 11753
(516) 622-1340

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UNITED STATES BANKRUPTCY COURT
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IN RE:

TRISHA K. CATA CUTAN,

Debtor.

NOTICE OF MOTION, APPLICATION
and
CERTIFICATE OF SERVICE

MARIANNE DeROSA, TRUSTEE
125 JERICHO TPKE, SUITE 105
JERICHO, NEW YORK 11753
(516) 622-1340
